**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPLICATION NO.4727 OF 2005**

Mohamed Arif Nooruddin Shaikh. ... Applicant.
Versus.
The State of Maharashtra. ... Respondent.

Shri A.K.Sayed for the Applicant.

Shri R.Y.Mirza, A.P.P. for the Respondent.

**CORAM : ABHAY S. OKA, J.**

**DATED : 8th August, 2005.**

**P.C.:**

1. The Applicant is charged with the offence under sections 302, 333 and 307 of the Indian Penal Code and sections 3, 5 and 25 of the Arms Act.

2. The offence is registered against the Applicant on the basis of the complaint filed by a Police Constable. According to the case of the complainant, he along with the deceased Police Constable R.R.Harale were present at Kurla Railway Station where they were informed that a person sitting on platform No.5 in the same Railway Station was carrying a revolver. On receiving the said information, the Complainant and the deceased Constable Harale went to the said person and enquired about the fire arm and possession of the licence. The said person

i.e. the accused declined to show the licence. Therefore, the Complainant and the deceased Constable Harale escorted the Accused to the Police Station. The Complainant was walking ahead of the accused and the accused was followed by the deceased Constable Harale. According to the Complainant, on the way, the accused suddenly opened fire on the deceased Harale as a result of which he ultimately died. When the Complainant was attending to the Constable Harale, the Accused/Applicant ran away from the spot of the incident. One more Constable present at the Railway Station Prahlad Dhawale attempted to get hold of the accused. However, the Accused/Applicant ran away. The case of the prosecution is that the Applicant was absconding and he was arrested in connection with some other offence and in the present case, he was arrested on transfer on 25th August 2004.

3. The learned Counsel for the Applicant submitted that there is already a finding recorded by the learned Sessions Judge that the evidence of test identification parade against the Applicant is doubtful. He submitted that the result of D.N.A. test is against the prosecution and therefore, the entire prosecution story becomes doubtful. The learned A.P.P. pointed out that the first informant had seen the Accused/Applicant for a sufficiently long time and he has identified the Applicant in test identification parade. The learned A.P.P. submitted that the offence is of a very serious

nature in which the Applicant has allegedly killed a Police Constable who was taking the Applicant to the Police Station.

4. I have considered the submissions. While rejecting the first bail application made by the Applicant, the learned Sessions Judge has made observation that the test identification parade conducted in this case was not held in proper manner. In fact, the learned Addl.Sessions Judge accepted the submission of the Advocate for the Applicant that the evidence with regard to the identification parade is full of doubt. The learned Addl.Sessions Judge, however, rejected the Application by holding that though the identification parade may not be a good piece of evidence, the Complainant himself had given clear description of the Applicant and he has identified the Applicant.

5. The second bail application was made after receipt of the DNA report. The case of the prosecution appears to be that the other Constable present at the Railway Station attempted to caught hold of the Accused. However, the Accused fired at the said Constable and ran away. The clothes on the person of the said Constable Dhawale were seized by the Police. According to the prosecution case, while the Applicant was attempting to run away by jumping over a wall, there was an injury sustained to the hands of the accused and there were

blood stains on the shirt of the Constable Dhawale of the blood coming out of the injury on the hands of the Applicant. The blood samples of the Constable Dhawale and the Applicant along with the blood stains on the clothes of Dhawale was sent for D.N.A. analysis. The report of the DNA test is that the blood stains detected on the shirt of Constable Dhawale and the blood samples of Constable Dhawale were of different biological individuals. The report further discloses that the blood in the blood stains detected on the shirt of the witness Dhawale and the blood samples of the Applicant are of different biological individuals.

6. Thus there appears to be a defect in the test identification parade and the report of the DNA test also creates a doubt about the prosecution story. The report of the DNA test is not in favour of the prosecution and in fact it completely runs contrary to the prosecution case. The Applicant is in custody for last about one year. In both the orders passed by the learned Addl.Sessions Judge, the observation is that the test identification parade against the Applicant is doubtful. Considering this aspect coupled with the result of the DNA test, the Applicant is entitled to be enlarged on bail.

7. Hence I pass the following order:

(i) The Applicant shall be enlarged on bail in connection with C.R.No.A-96 of 2003 of Kurla Railway Police Station, subject to furnishing a personal bond of Rs.25,000/- with one or two local sureties in the like amount.

(ii) The Bail is granted subject to condition that the Applicant will report to the Investigating officer once in a week till conclusion of the trial.

(iii) The Bail is granted subject to condition that the Applicant shall not, directly or indirectly, make any inducement or threat to any prosecution witnesses and shall not in any manner tamper with prosecution evidence.

(iv) The Applicant shall cooperate with the learned Trial Judge for expeditious disposal of the trial. Any attempt by the Applicant to delay the trial may be a ground for cancellation of bail.

(v) Any observation made in this order shall

not be construed as any finding or any expression of opinion on the merits of the case at the time of trial.

(vi) Application is disposed of in above terms.

(vii) The parties to act upon an authenticated copy of this order.

**Judge.**